CF0000165032

(1) (2)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

SINGLE BENCH

WRIT PETITION NO. 1925 /2006

Ram Kumar Kori,
S/o- Late Shyam Lal Kori,
Aged about 33 years,
Presently working as Peon
In the office of Principal Account Training School,
Bilaspur, Distt. Bilaspur,
Chhattisgarh. **PETITIONER**

VERSUS

1. Director,
Treasury, Account and Pension,
Raipur,
Chhattisgarh,

2. Joint Director,
Treasury, Account & Pension,
Bilaspur Division, Bilaspur,
Distt. Bilaspur,
Chhattisgarh.

3. Principal,
Account Training School,
Bilaspur, Distt. Bilaspur,
Chhattisgarh. **RESPONDENTS**

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT IN THE NATURE OF MANDAMUS, CERTIORARI ETC.

(62) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 1922 of 2006

Petitioner		Ram Kumar Kori
	Versus	
Respondents		Director, Treasury, Accounts and Pension, Raipur & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Pankaj Shrivastava, Advocate for the petitioner.

Shri Satish Gupta, Deputy Govt. Advocate for the respondents.

ORDER

(Passed on this 7th day of February, 2007)

1. The petitioner was employed as Peon vide order dated 4.11.1989 and he is working in the office of the respondent No.3. Learned counsel for the petitioner submits that the petitioner is entitled to consideration for promotion to the post of Assistant Grade-III.

2. It is jointly admitted by learned counsel appearing for the parties that the minimum required qualification to the post is higher secondary pass and five years experience as regular employee on the post of Peon (Class-IV). It is further admitted that the petitioner has acquired higher secondary school examination certificate in the year 2001. The petitioner prays for his promotion, immediately after he has obtained the required qualification, after having worked for five years.

3. Promotion does not depend on the required qualification and experience only. Promotion depends upon other factors like availability of the posts and economic condition of the

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employer. Hon'ble Supreme Court in the case of **Mohammad Shujat Ali & others Vs. Union of India & others** { (1975) 3 S.C.C. 76} has observed as under:-

> "15.....It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can no longer be disputed in view of several pronouncements of this Court on the point and particularly the decision in Mohammad Bhakar v. Y. Krishna Reddy[1] where this Court, speaking through Mitter, J., said : "Any rule which affects the promotion of a person relates to his condition of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion—the latter would certainly not be a condition of service. This Court pointed out in State of Mysore v. G. B. Purohit[2] that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service....."

4. A constitution Bench of Hon'ble the Supreme Court in the case of **Union of India and others Vs. S. L. Dutta and anothers** { (1991) 1 S.C.C. 505} has held that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion do not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service, chances of promotion are not.

5. A constitution Bench of Hon'ble the Supreme Court in the case of **Syed Khalid Rizvi and others Vs. Union of India and others** { 1993 Supp (3) S.C.C. 575} has held that no employee has a right to promotion but he has only the right

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to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. Further in the case of **High Court of Gujarat and another Vs. Gujarat Kishan Mazdoor Panchayat and others** { (2003) 4 S.C.C. 712} it was held by the Hon'ble Supreme Court that an employee has legitimate expectation to be promoted to the higher post but nobody has a vested right to be promoted.

6. In the case of **K. Samantaray Vs. National Insurance Co. Ltd.** { (2004) 9 S.C.C. 286} the Hon'ble Supreme Court has held that "promotion, as understood in the service law jurisprudence, is advancement in rank, grade or both and no employee has a right to be promoted, but has a right to be considered for promotion."

7. In view of the principles laid down by the Hon'ble Supreme Court in the cases (supra), it is well settled that no employee has a right to be promoted, but has a right to be considered for promotion. By virtue of the fact that the petitioner has completed more than five years on the post of Peon and has acquired qualification in the year 2001, he has no right to the promotion to the next higher post, but he has a right to be considered for promotion to the next higher post.

8. For the reasons stated above, the petition is allowed. The respondents are directed to consider the case of the petitioner for promotion to the next higher post, in accordance with law. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur